

§ 9.106

(2) To the extent the rules in 29 CFR part 18 are inconsistent with a rule of special application provided by these regulations or the Executive Order, these regulations and the Executive Order are controlling.

§ 9.106 What rules apply to the decision of the administrative law judge?

(a) The administrative law judge shall issue a decision within 60 days after completion of the proceeding at which evidence was submitted. The decision shall contain appropriate findings, conclusions, and an order and be served upon all parties to the proceeding.

(b) Upon the conclusion of the hearing and the issuance of a decision that a violation has occurred, the administrative law judge shall issue an order that the successor contractor take appropriate action to abate the violation, which may include hiring the affected employee(s) in the same or a substantially equivalent position(s) to that which the employee(s) held under the predecessor contract, together with compensation (including lost wages), terms, conditions, and privileges of that employment. Where ineligibility sanctions have been sought by the Administrator, the order shall also address whether such sanctions are appropriate.

(c) If an order is issued finding that the contractor violated the Executive Order and these regulations, the administrative law judge may assess a sum equal to the aggregate amount of all costs (not including attorney fees) and expenses reasonably incurred by the aggrieved employee(s) in the proceeding.

(d) A proceeding under subpart B of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

(e) The decision of the administrative law judge shall become the final order of the Secretary unless a petition for review is timely filed with the Administrative Review Board.

29 CFR Subtitle A (7-1-97 Edition)

APPEAL PROCEDURES

§ 9.107 How may an administrative law judge's decision or the Administrator's determination be appealed?

(a) The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from determinations of the Administrator pursuant to § 9.103(b) of this part and from decisions of administrative law judges pursuant to § 9.106 of this part.

(b) Any aggrieved party desiring review of a decision of the administrative law judge (or of the Administrator, pursuant to § 9.103(b)) shall file a petition for review, in writing, with the Administrative Review Board. No administrative or judicial review shall be available unless a timely petition for review to the Administrative Review Board is first filed. To be effective, such a petition for review must be received within 20 days of the date of the decision of the administrative law judge (or Administrator), and shall be served on all parties and the Chief Administrative Law Judge (where the case involves an appeal from an administrative law judge's decision). If a timely petition for review is filed, the decision of the administrative law judge (or Administrator) shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision or declining review of the matter. If a petition for review concerns only the imposition of ineligibility sanctions, however, the remainder of the decision shall be effective immediately.

(c)(1) A petition for review shall refer to the specific findings of fact, conclusions of law, or order at issue.

(2) Copies of the petition and all briefs shall be served on the Administrator, Wage and Hour Division, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(d) The Board's final decision shall be issued within 90 days of the receipt of the petition for review and shall be served upon all parties by mail to the last known address, and on the Chief Administrative Law Judge (in cases involving an appeal from an administrative law judge's decision).